

EXHIBIT 2

AMENDED IN ASSEMBLY MAY 22, 1970
AMENDED IN ASSEMBLY APRIL 16, 1970

CALIFORNIA LEGISLATURE—1970 REGULAR SESSION

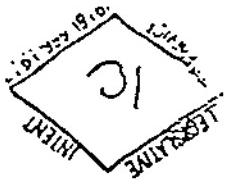
ASSEMBLY BILL

No. 292

Introduced by Assemblyman Hayes

January 21, 1970

REFERRED TO COMMITTEE ON JUDICIARY



An act to add Title 1.5 (commencing with Section 1750) to Part 4 of Division 3 of the Civil Code, relating to the Consumers Legal Remedies Act.

The people of the State of California do enact as follows:

- 1 SECTION 1. Title 1.5 (commencing with Section 1750) is added to Part 4 of Division 3 of the Civil Code, to read:
 - 3
 - 4 TITLE 1.5. CONSUMERS LEGAL REMEDIES ACT
 - 5
 - 6 CHAPTER 1. GENERAL PROVISIONS
 - 7
 - 8 1750. This title may be cited as the Consumers Legal Remedy Act.
 - 9
 - 10 1751. Any waiver by a consumer of the provisions of this title is contrary to public policy and shall be unenforceable and void.
 - 11
 - 12
 - 13 1752. The provisions of this title are not exclusive, and
 - 14 the remedies provided for in this title shall be in addition to
 - 15 any other remedies provided for in any other law.
 - 16 Nothing in this title shall limit any other statutory or any
 - 17 common law rights of the Attorney General or any other

LEGISLATIVE COUNSEL'S DIGEST

AB 292, as amended, Hayes (Jud.). Consumers Legal Remedies Act. Adds Title 1.5 (commencing with Sec. 1750), Pt. 4, Div. 3, Civ.C. Enacts Consumers Legal Remedies Act which provides specific legal remedies for consumers who suffer damage as a result of method, act, or practice declared to be unlawful by the act.
Vote—Majority; Appropriation—No; Fiscal Committee—No.

1 Person to bring class actions. Class actions by consumers based
 2 upon practices declared to be unlawful by Chapter 3 (commencement
 3 with Section 1770) or this title shall be governed ex-
 4clusively by the provisions of Chapter 4 (commencing with
 5 Section 1780).

6 1753. If any provision of this title or the application thereof
 7 to any person or circumstances is held to be unconstitutional,
 8 the remainder of the title and the application of such provision
 9 to other persons or circumstances shall not be affected thereby.
 10 1754. The provisions of the title shall not apply to any
 11 transaction which provides for the construction, sale, or con-
 12 struction and sale of an entire residence or all or part of a
 13 structure designed for commercial or industrial occupancy,
 14 with or without a parcel of real property or an interest therein,
 15 or for the sale of a lot or parcel of real property, including
 16 any site preparation incident to such sale.
 17 1755. Nothing in this title shall apply to the owners or
 18 employees of any advertising medium, including, but not
 19 limited to, newspapers, magazines, broadcast stations, bill-
 20 boards, and transit ads, by whom any advertisement in viola-
 21 tion of this title is published or disseminated, unless it is es-
 22 tablished that such owners or employees had knowledge of
 23 the deceptive methods, acts or practices declared to be unlaw-
 24 ful by Section 1770.

CHAPTER 2. CONSTRUCTION AND DEFINITIONS

25 1760. This title shall be liberally construed and applied
 26 to promote its underlying purposes, which are to protect con-
 27 sumers against unfair and deceptive business practices and to
 28 provide efficient and economical procedures to secure such
 29 protection.
 30 1761. As used in this title:
 31 (a) "Goods" means tangible chattels bought for use pri-
 32 marily for personal, family, or household purposes, including
 33 certificates or coupons exchangeable for such goods; and in-
 34 cluding goods which, at the time of the sale or subsequently,
 35 are to be so affixed to real property as to become a part of
 36 such real property, whether or not severable therefrom.
 37 (b) "Services," means work, labor, and services for other
 38 than a commercial or business use, including services furnished
 39 in connection with the sale or repair of goods.
 40 (c) "Person" means an individual, partnership, corpora-
 41 tion, association, or other group, however organized.
 42 (d) "Consumer" means an individual who seeks or ac-
 43quires, by purchase or lease, any goods, services, money, or
 44 credit for personal, family, or household purposes.
 45 (e) "Transaction" means an agreement between a consumer
 46 and any other person, whether or not the agreement is a con-
 47 tract enforceable by action, and includes the making of, and
 48 the performance pursuant to, that agreement.

CHAPTER 3. DECEPTIVE PRACTICES

- 1 1770. The following unfair methods of competition and un-
 2 fair or deceptive acts or practices undertaken by any person
 3 in the conduct of any trade or commerce sale or lease of goods
 4 or services to any consumer are unlawful:
 5 (a) Passing off goods or services as those of another.
 6 (b) Causing likelihood of confusion or misimpressioning the
 7 source, sponsorship, approval, or certification of goods or services.
 8 (c) Causing likelihood of confusion or misimperceptioning the
 9 source, sponsorship, approval, or connection, or association
 10 with, or certification by, another.
 11 (d) Using deceptive representations or designations of geo-
 12 graphic origin in connection with goods or services.
 13 (e) Representing that goods or services have sponsorship,
 14 approval, characteristics, ingredients, uses, benefits, or qua-
 15 lities which they do not have or that a person has a sponsor-
 16 ship, approval, status, affiliation, or connection which he does
 17 not have.
 18 (f) Representing that goods are original or new if they
 19 have deteriorated unreasonably or are altered, reconditioned,
 20 repainted, or otherwise treated.
 21 (g) Representing that goods or services are of a particular
 22 standard, quantity, or grade, or that goods are of a particular
 23 style or model, if they are of another.
 24 (h) Disparaging the goods, services, or business of another
 25 by false or misleading representation of fact.
 26 (i) Advertising goods or services with intent not to supply
 27 reasonably explicable public demand, unless the advertisement
 28 discloses a limitation of quantity.
 29 (j) Advertising goods or services with intent not to supply
 30 as advertised.
 31 (k) Making false or misleading statements of fact concern-
 32 ing persons for, existence of, or amounts of price reductions.
 33 (l) Representing that a transaction concerns or involves
 34 rights, remedies, or obligations which it does not have or in-
 35 volve, or which are prohibited by law.
 36 (m) Representing that a part, replacement, or repair serv-
 37 ices is needed when it is not.
 38 (n) Representing that the subject of a transaction has been
 39 supplied in accordance with a previous representation when
 40 it has not.
 41 (o) Representing that the consumer will receive a rebate,
 42 discount, or other economic benefit as an inducement for en-
 43 tering into a transaction, if the earning of the benefit is con-
 44 tingent on an event to occur subsequent to the consummation
 45 of the transaction.
 46 (p) Causing likelihood of confusion or misimperceptioning
 47 with respect to Misrepresenting the authority of a salesperson,
 48 representative, or agent to negotiate the final terms of a trans-
 49 action, and any other person, whether or not the agreement is a con-
 50 tract enforceable by action, and includes the making of, and
 51 the performance pursuant to, that agreement.

CHAPTER 4: REMEDIES AND PROCEDURES

1780. Any consumer who obtains credit, or purchases
 1 or leases, or agrees to purchase or lease, goods or services pri-
 2 marily for personal, family, or household purposes, and who
 3 thereby suffers any damage as a result of the use or employ-
 4 ment by any person of a method, act, or practice declared to
 5 be unlawful by Section 1770 or 1771 may bring an action
 6 against such person in the county in which the person resides,
 7 has his principal place of business, or is doing business, or in
 8 the county where the transaction or any substantial portion
 9 thereof occurred, to recover or obtain any of the following:

(a) Actual damages, but in no case shall an award of damages in a class action be less than three hundred dollars (\$300).

(b) An order enjoining such methods, acts, or practices.

(c) Punitive damages.

(d) Any other relief which the court deems proper.

1781. (a) Any consumer entitled to bring an action under
 1780 may, if the unlawful method, act, or practice
 17 has caused damage to other consumers similarly situated,
 18 bring an action on behalf of himself and such other consum-
 19 er to recover damages or obtain other relief as provided for
 20 in Section 1780.

(b) The court shall permit the suit to be maintained on
 20 behalf of all members of the represented class if all of the
 21 following conditions exist:

(1) It is impracticable to bring all members of the class
 22 before the court.

(2) The questions of law and fact common to the class are
 23 substantially similar and predominate over the questions af-
 24 fecting the individual members.

(3) The claims or defenses of the representative plaintiff
 25 are typical of the claims or defenses of the class.
 26 (4) The representative plaintiff will fairly and adequately
 27 protect the interests of the class.

(5) If notice of the time and place of the hearing is served
 28 upon the other parties at least 10 days prior thereto, the court
 29 shall hold a hearing, upon motion of any party to the action
 30 which is supported by affidavit of any person or persons hav-
 31 ing knowledge of the facts, to determine if any of the follow-
 32 ing apply to the action:

(1) A class action pursuant to subdivision (b) is proper.
 33 (2) Published notice pursuant to subdivision (d) is neces-
 34 sary to adjudicate the claims of the class.

(3) The action is without merit or there is no defense to
 35 the action.

A motion based upon Section 437c of the Code of Civil Pro-
 36 cedure shall not be granted in any action commenced as a
 37 class action pursuant to subdivision (a).

- (d) If the action is permitted as a class action, the court
 1 may direct either party to notify each member of the class
 2 of the action. The party required to serve notice shall, if it
 3 appears that all members of the class cannot be served person-
 4 ally, give notice as prescribed herein by publication in ac-
 5 cordance with Section 6064 of the Government Code in a
 6 newspaper of general circulation in the county in which the
 7 transaction occurred. The notice shall state the following:
 8 (1) The court will exclude the member notified from the
 9 class if he so requests by a specified date.
 10 (2) The judgment, whether favorable or not, will include
 11 all members who do not request exclusion.
 12 (3) Any member who does not request exclusion, may, if
 13 he desires, enter an appearance through counsel.
 14 (e) A class action shall not be dismissed, settled, or com-
 15 promised without the approval of the court, and notices of the
 16 proposed dismissal, settlement, or compromise shall be given in
 17 such manner as the court directs to each member who was
 18 given notice pursuant to subdivision (d) and did not request
 19 exclusion.
 20 (f) The judgment in a class action shall describe those to
 21 whom the notice was directed and who have not requested ex-
 22 clusion and those the court finds to be members of the class.
 23 The best possible notice of the judgment shall be given in
 24 such manner as the court directs to each member who was per-
 25 sonally served with notice pursuant to subdivision (d) and
 26 did not request exclusion.
 27 1782. (g) Thirty days prior to the commencement of any
 28 action for damages pursuant to the provisions of this title,
 29 the consumer shall:
 30 (1) Notify the person alleged to have employed or com-
 31 mitted methods, acts or practices declared unlawful by Sec-
 32 tion 1770 of the particular alleged violations of Section 1770;
 33 (2) Demand that such person correct, repair, replace, or
 34 otherwise rectify the goods or services alleged to be in viola-
 35 tion of Section 1770.
 36 Such notice shall be in writing and shall be sent by certified
 37 mail, return receipt requested, to the place
 38 or registered mail, return receipt requested, to the place
 39 where the transaction occurred, such person's principal place
 40 of business within California, or the office of the Secretary
 41 of the State of California, whichever is most likely to effect
 42 actual notice.
 43 (b) Except as provided in subdivision (c), no action may be
 44 maintained under the provisions of Section 1780 if an appro-
 45 priate correction, repair, replacement or other remedy is given,
 46 or agreed to be given within a reasonable time, to the con-
 47 sumer within 30 days after receipt of such notice.
 48 (c) No action may be maintained under the provisions of
 49 Section 1781 upon a showing by a person alleged to have em-
 50 ployed or committed methods, acts or practices declared un-
 51 lawful by Section 1770 that:
 52

1 (1) All consumers similarly situated have been identified,
2 or a reasonable effort to identify such other consumers has
3 been made;

4 (2) All consumers so identified have been notified that upon
5 their request such person shall make the appropriate corre-
6 tion, repair, replacement or other remedy of the goods and
7 services;

8 (3) That the correction, repair, replacement or other rem-
9 edy requested by such consumer has been, or, in a reasonable
10 time, shall be, given; and

11 (4) Such person has ceased to engage in such methods, acts
12 or practices.

13 (d) Not less than 30 days after the commencement of an
14 action for injunctive relief, the consumer may amend his com-
15 plaint without leave of court to include a prayer for damages
16 after compliance with the provisions of subdivision (b) or (e).

17 1782. A party who prevails in an action under this title
18 may be awarded reasonable attorney fees, to be specified in
19 the judgment. A legal aid society or legal services program
20 which represents a consumer who prevails in an action under
21 this title may be awarded a reasonable sum in lieu of attorney
22 fees.

23 1783. Any action based on a method, act, or practice
24 declared to be unlawful by Section 1770 shall be commenced
25 not more than six months one year from the date of the
26 commencement of such method, act, or practice or six months one
27 year from the date the plaintiff knew or reasonably should
28 have known of the commission of such method, act, or prac-
29 tice, whichever occurs later.

30 (b) No person shall be a member of a class for which an
31 action is commenced under Section 1781 unless such person
32 shall have been involved in a transaction declared to be un-
33 lawful by Section 1770 within two years prior to the com-
34 mencement of the action.

35 1784. An assignee of the rights of a seller or creditor is
36 subject to all claims and defenses of the consumer arising out
37 of a transaction covered by this title.
38 1785. A person may not be held liable in any action
39 based on a method, act, or practice declared to be unlawful by
40 Section 1770 if the person showed by a preponderance of evi-
41 dence, and not requiring intent as an element thereof, the
42 court may consider in mitigation of damages that the viola-
43 tion was not intentional and resulted from a bona fide error
44 notwithstanding the maintenance of procedures reasonably
45 adopted to avoid any such error.